IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5513 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

SNEHALATA M GAEKWAD

Versus

STATE OF GUJ

---

Appearance:

1. Special Civil Application No. 5513 of 1991

MR SP HASURKAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

---

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 08/07/2003

ORAL JUDGEMENT

The present Special Civil Application is filed challenging the order passed by the Assistant Collector, Vadodara in Ceiling Revision No.5 of 1988 dated 19.5.1989, whereby the Assistant Collector was pleased to

quash and set aside the order passed by the Mamlatdar & Agricultural Tribunal in Ceiling Case No.5/76 dated 31.8.1988 and was pleased to declare the land admeasuring 7 acres 38 gunthas as a 'surplus land'. The order of the Assistant Collector was confirmed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.541/ 89 by judgement and order dated 15.3.1991. The Revision Application was dismissed holding that the Assistant Collector is right in holding that if the applicant is not able to use the land as agricultural land, he can surrender the same as a surplus land.

2. The facts of the case are that the petitioner is a holder of land admeasuring 35 acres, 15 gunthas bearing Survey No.1139 of Village Kumad, Taluka/ District Vadodara. It is the case of the petitioner that as the land is situated on the bank of river, 'Vishwamitri', on account of frequent floods, resulting in heavy soil erosion, out of the aforesaid land only 30 acres of land is left, which can be used for agriculture. The petitioner was served with a Registered Post Notice under section 20(1) of the Gujarat Agricultural Lands Ceiling Act, 1960, (hereinafter referred to as "the Act"), which was received by the petitioner on 9.8.1976. The petitioner had filed his objections thereto on 7.9.1976. In the said objections, i.e. reply to the notice the petitioner had pointed out that his land situated in the sim of Village Kumad, is situated on the banks of river 'Vishwamitri' and that because of the floods in the river, there is soil erosion and the land has become 'Kotar land' (land eroded by flood waters turning it into ravines) and has not remained capable of being used for agricultural purposes. It was also pointed out that on account of change of course of river, part of the land has merged into the river bed. Thus, the petitioner is now having agricultural land which is less than the ceiling limit and that the same should be determined after the survey by the Survey Department. The request of the petitioner was granted and survey was carried out. The matter was registered as Ceiling Case No.5 of 1976 in the Court of the Mamlatdar & Agricultural Land Tribunal (ALT). The Mamlatdar & ALT by his judgement and order dated 2.4.1977 was pleased to hold that the petitioner is holding the land capable of being used for agricultural operations admeasuring 30 acres, 21 gunthas and thus, the same is in excess of the ceiling limit by 21 gunthas. But then, the land admeasuring 21 gunthas will be a fragment and therefore, under the provisions of subsection (1) of section 18 of the Act, the petitioner was allowed to retain the land admeasuring 21 gunthas and the notice dated 3.8.1976 issued under which subsec.(2)

of section 20 of the Act was discharged.

3. It transpires from the record that against the said order of the Mamlatdar & ALT the matter was taken to the Deputy Collector, Vadodara who by his order dated 18.12.1979 was pleased to remand the matter and therefore, the matter was heard once again by the Mamlatdar & ALT who by his order dated 26.2.1981 was pleased to hold that the notice issued to the petitioner is required to be withdrawn and an order to that effect was passed. It further transpires from the record that a revision application was preferred before the Assistant Collector, Vadodara being Ceiling/ Revision/ 5/88 which came to be decided by an order dated 19.5.1989 (the impugned order in this petition), whereby the order of the Mamlatdar & ALT in Ceiling Case No.5/76 dated 31.8.1988 was quashed and set aside and the land admeasuring 7 acres, 31 gunthas is declared as surplus. The Assistant Collector, Vadodara did consider the contentions raised on behalf of the petitioner that under the Act, the term 'land' is defined in subsection (17) of section 2 of the Act. According to that definition, "the land is the one which is used or capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such land," that since the land which is affected by soil erosion, admeasuring 7 acres, 17 gunthas and the land admeasuring 23 gunthas on which construction is there, cannot be considered within the holding of the petitioner under the Act. A certificate to that effect, issued by the District Agricultural Officer was produced along with a document being Form No.4 and the measurement map prepared by the District Inspector was also placed on record and the same was taken into consideration by the Mamlatdar & ALT. The Assistant Collector also took into consideration the certificate issued by the Executive Engineer pointing out that the petitioner is holding non irrigated land, but then he was pleased to hold that the contention of the petitioner that the land which has become 'Kotar land', is to be exempted from the holding of the petitioner cannot be accepted. The Assistant Collector held that 'Kotar land' is liable to be taken into account while determining the holding of the petitioner. The Assistant Collector was of the opinion that there is no provision in the Act for exclusion of the 'Kotar land' and the land on which structure is put up. The Assistant Collector was also of the opinion that if it was not possible to cultivate the 'Kotar lands', the petitioner should have agreed to surrender such lands as 'surplus' but as the petitioner is objecting to declaration of any land being surplus lands his bona fides are not beyond doubt.

4. Mr.Hasurkar, the learned advocate appearing for the petitioner submits that the Assistant Collector has committed an error while considering and appreciating the contentions of the petitioner. He submitted that the Assistant Collector has overlooked the certificates issued by the authorities in this regard. He submitted that while considering the holding of a person under the Act, the land which falls within the definition of the term 'land' under the Act only is required to be considered, therefore, once there is a certificate to the effect that the part of the land held by the petitioner is not capable of being used for agricultural purposes, the same cannot be taken into consideration for determining the extent of holding of the petitioner. he strenuously submitted that the Assistant Collector has also erred in saying that there is no provision under the Act for exclusion of the 'Kotar land' and the land on which the structure is standing. He submitted that this is nothing but putting the cart before the horse inasmuch as under the Act only land which is falling within the definition of land is required to be taken into consideration and no other land. Therefore, there is no question of there being no provision for exclusion of 'Kotar land' or the land on which 'structure' is standing.

5. The learned advocate submitted that the revisional authority also proceeded on the same lines and did not appreciate the contentions raised by the petitioner. He submitted that the revisional authority has committed an error while observing that, "now in this case there is no convincing evidence that the land is not capable of being used for agricultural purpose".

6. He submitted that in fact this matter was remanded not once but on three occasions to the Mamlatdar & ALT for reconsideration and every time the Mamlatdar & ALT was pleased to hold on appreciation of the facts that the land is 'Kotar land' and is not capable of being used for agricultural purposes and hence the notice issued under subsection (1) of section 20 of the Act was cancelled. He submitted that the question is in a very narrow compass. If a part of the land of the petitioner has become 'Kotar land' which is not capable of being used for agricultural purpose the same cannot form part of the holding of the petitioner under the Act. Therefore, no land of the petitioner can be declared to be 'surplus land'.

7. On perusal of the judgement and order of the

revisional authority it is clear that the authority has misdirected itself while appreciating the submissions/ contentions of the petitioner. It can also be seen that though the revisional authority was alive to the definition of the term 'land' under subsec.(17) of sec.2 of the Act, it erred while coming to the final conclusion. It committed error possibly because of the revisional authority without appreciating the evidence on record was pleased to make a sweeping observation that, "....  Now in this case there is no convincing evidence that the land is not being capable of being used for agricultural purpose. ....."

8. In view of the aforesaid discussion the judgement and order dated 19.5.1989 of the Assistant Collector, Vadodara in Ceiling Revision No.5 of 1988 and the judgement and order of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 541 of 1989 dated 15.3.1991 are hereby quashed and set aside. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

karim